

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

March 12, 2007

DIVISION FIVE

B192995 People (Not for Publication)
v.
Thomas Vaught

The sentence on court 3 is ordered stayed pursuant to section 654. The abstract of judgment is ordered corrected to show that the one-year enhancement for count 3 is imposed pursuant to section 12022, subdivision (a) (1). The judgment is affirmed in all other respects.

Armstrong, J.

We concur: Turner, P.J.
 Mosk, J.

B188972 Jayendra A. Shah et al., (Certified for Publication)
v.
Marilyn E. McMahon

The appeal is dismissed. McMahon shall recover her costs incurred in connection with the appeal.

Armstrong, J.

We concur: Turner, P.J.
 Kriegler, J.

March 12, 2007 (Continued)

DIVISION FIVE (Continued)

B188776 Mercedes Nakamoto (Not for Publication)

v.

Luis Nakamoto

The judgment is affirmed. Respondent(s) to recover costs.

Kriegler, J.

We concur: Turner, P.J.

Mosk, J.

B190770 Leonard Drake (Not for Publication)

v.

Margaret Monos

The judgment is affirmed. Respondent(s) to recover costs.

Mosk, J.

We concur: Turner, P.J.

Kriegler, J.

B185319 Jesus Valdez (Not for Publication)

v.

Lennox Hearth Products

The judgment is affirmed. Respondent(s) to recover costs.

Armstrong, J.

We concur: Turner, P.J.

Mosk, J.

March 12, 2007 (Continued)

DIVISION SEVEN

B189670 People (Not for Publication)
v.
Butler

The judgment is affirmed.

Zelon, J.

We concur: Perluss, P.J.
Johnson, J.

B190712 Santa Monica Properties, Inc. et al.,
v.
A/R Capital, LLC et al.,

Filed order denying petition for rehearing.

DIVISION EIGHT

B186707 Levitz (Certified for Publication)
v.
The Warlocks et al.,

The judgment is reversed and the matter is remanded to the trial court for further proceedings. Each side to bear its own costs on appeal.

Rubin, Acting P.J.

We concur: Boland, J.
Flier, J.

DIVISION EIGHT (Continued)

B190075 In re Norberto Arredondo (Not for Publication)
on
Habeas Corpus

The record before us does not establish ineffective assistance of counsel as a matter of law, but the possibility certainly exists. *People v. Bess, supra*, 153 Cal.App.3d at pages 1059-1060 is potentially illustrative, and depending on the facts which await further development in this proceeding, pertinent. The *Bess* court observed in a case involving counsel's failure to interview witnesses:

"The record demonstrates numerous witnesses (1)claim to have observed the [crime] in a light which casts doubt upon the prosecution theory and enhances the defense; (2)were willing to be interviewed by the defense; (3)were not interviewed nor called at trial. Assuming in hindsight, their individual or cumulative testimony would have affected the verdict, is trial counsel's professed decision not to interview or call the witnesses a tactic within the range of reasonable competence? We must say no." (*Ibid.*)

We therefore remand this matter to the Los Angeles Superior Court. The Presiding Judge of that court shall appoint Judge Lisa B. Lench, who presided over petitioner's trial, or another judicial officer to act as a referee of the Court of Appeal. The referee shall take evidence concerning the reasons defense counsel did not call petitioner's family witnesses at trial and any reasonably related subjects. The California Appellate Project is directed within 10 days of the filing of this opinion to recommend for appointment by the Court of Appeal new counsel who shall represent appellant in the evidentiary hearing and any later appellate proceedings.

The matter shall be placed on the trial court's calendar for a status conference within 30 days, and the evidentiary hearing shall be held within 60 days of the status conference. Within 30 days after the evidentiary hearing, the referee shall submit written findings to us and serve copies on all counsel of record. (*In re Thomas, supra*, 37 Cal.4th at p. 1256 [referee appointed to sort out conflicting credibility and evidentiary matters]; *In re Visciotti* (1996) 14 Cal.4th 325, 329, 335, 345 [referee appointed to take evidence on questions posed by reviewing court and filed report with

March 12, 2007 (Continued)

DIVISION EIGHT (continued)

In re Arredondo on Habeas Corpus (continued):

reviewing court]; *In re Weber* (1974) 11Cal.3d 703, 706; Levenson, Cal. Crim. Proc. (2006-2007 ed.) §30.25, pp.1396-1397.) Based on those findings, we will then take further action as appropriate.

Rubin, Acting P.J.

We Concur: Boland, J.
Flier, J.